

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 352

SENATE BILL 1509

AN ACT

AMENDING SECTIONS 4-201, 4-203, 4-205.04, 4-210 AND 4-244, ARIZONA REVISED
STATUTES; RELATING TO ALCOHOLIC BEVERAGES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 4-201, Arizona Revised Statutes, is amended to
3 read:

4 4-201. Licensing; application procedure in city, town or
5 county; burden of proof

6 A. A person desiring a license to manufacture, sell or deal in
7 spirituous liquors shall make application to the director on a form
8 prescribed and furnished by the director.

9 B. A person desiring a license within an incorporated city or town
10 shall make the application in triplicate and shall file the copies with the
11 director. The director shall remit two copies to the city or town
12 clerk. The city or town clerk shall immediately file one copy in the clerk's
13 office and post the other for a period of twenty days in a conspicuous place
14 on the front of the premises where the business is proposed to be conducted,
15 with a statement requiring any person who is a bona fide resident residing
16 or owning or leasing property within a one mile radius from the premises
17 proposed to be licensed, and who is in favor of or opposed to the issuance
18 of the license, to file written arguments in favor of or opposed to issuance
19 of the license with the clerk within twenty days after the date of posting.
20 The posting shall contain substantially the following:

21 Notice

22 A hearing on a liquor license application shall be held before
23 the local governing body at the following date, time and place:
24 (Insert date, time and address)

25 The local governing body will recommend to the state liquor
26 board whether the board should grant or deny the license. The
27 state liquor board may hold a hearing to consider the
28 recommendation of the local governing body. Any person residing
29 or owning or leasing property within a one-mile radius may
30 contact the state liquor board in writing to register as a
31 protestor. To request information regarding procedures before
32 the board and notice of any board hearings regarding this
33 application, contact the state liquor board at:

34 (Insert address and telephone number).

35 No arguments shall be filed or accepted by the city or town clerk
36 thereafter. This subsection shall not be construed to prevent a bona fide
37 resident residing or owning or leasing property within a one-mile radius from
38 the premises proposed to be licensed from testifying in favor of or in
39 opposition to the issuance of the license, regardless of whether or not the
40 person is a user or nonuser of spirituous liquor.

41 C. The governing body of the city, or town OR COUNTY shall then enter
42 an order recommending approval or disapproval within sixty days after filing
43 of the application and shall file a certified copy of the order with the
44 director. If the recommendation is for disapproval, a statement of the
45 specific reasons containing a summary of the testimony or other evidence

1 supporting the recommendation for disapproval shall be attached to the
2 order. All petitions submitted to the governing body within the twenty-day
3 period for filing the ~~protest~~ PROTESTS shall be transmitted to the director
4 with the certified copy of the order.

5 D. If a person applies for a license to conduct a spirituous liquor
6 business outside an incorporated city or town, the director shall remit two
7 copies of the application to the clerk of the board of supervisors of the
8 county where the applicant desires to do business, and the proceedings by the
9 clerk and board of supervisors shall be as provided for cities and towns.

10 E. Upon receipt of an application for a spirituous liquor license, the
11 director shall set the application for hearing by the board upon a date
12 following the expiration of the time fixed for the submitting of the
13 certified order by the governing body of the city or town or the board of
14 supervisors. If the city or town or the county recommends approval of the
15 license no hearing is required unless the director, the board or any
16 aggrieved party requests a hearing on the grounds that the public convenience
17 and the best interest of the community will not be substantially served if
18 a license is issued. Any person residing or owning or leasing property
19 within a one mile radius of the proposed location may file a written protest
20 with the director no later than fifteen calendar days following action by the
21 local governing body or sixty days after filing the application. If no
22 hearing is requested by the director, the board or any aggrieved party, the
23 application may be approved by the director. If the recommendation is for
24 disapproval of an application or if no recommendation is received, the board
25 shall hold a hearing. IF THE CITY, TOWN OR COUNTY RECOMMENDS APPROVAL OF THE
26 LICENSE PURSUANT TO SUBSECTION C, THE DIRECTOR MAY CANCEL THE HEARING AND
27 ISSUE THE LICENSE UNLESS THE BOARD OR ANY AGGRIEVED PARTY REQUESTS A HEARING.
28 The certified order, the reasons contained therein, IN THE ORDER and the
29 summary of the testimony and other evidence supporting the city, town or
30 county disapproval of the recommendation shall be read into the record before
31 the board and shall be considered as evidence by the board. The board shall
32 consider the certified order together with other facts and a report of the
33 director relating to the qualifications of the applicant. If the governing
34 body of the city or town or the board of supervisors fails to return to the
35 director, as provided in subsections C and D, its order of approval or
36 disapproval, the board shall proceed with further consideration of the
37 application by holding an administrative hearing. An application shall be
38 approved or disapproved within one hundred five days after filing of the
39 application.

40 F. A hearing may be conducted by an administrative law judge at the
41 request of the board to make findings and recommendations for use by the
42 board in determining whether to grant or deny a license. The administrative
43 law judge shall submit a report of findings to the board within twenty days
44 of the hearing. The board may affirm, reverse, adopt, modify, supplement,
45 amend or reject the administrative law judge's report in whole or in part.

1 G. In all proceedings before the governing body of a city or town, the
2 board of supervisors of a county or the board, the applicant bears the burden
3 of showing that the public convenience requires and that the best interest
4 of the community will be substantially served by the issuance of a license.

5 H. In order to prevent the proliferation of spirituous liquor licenses
6 the department may deny a license to a business on the grounds that such
7 business is inappropriate for the sale of spirituous liquor. An
8 inappropriate business is one that cannot clearly demonstrate that the sale
9 of spirituous liquor is directly connected to its primary purpose and that
10 the sale of spirituous liquor is not merely incidental to its primary
11 purpose.

12 I. The board shall adopt, by rule, guidelines setting forth criteria
13 for use in determining whether the public convenience requires and the best
14 interest of the community will be substantially served by the issuance or
15 transfer of a liquor license at the location applied for. These guidelines
16 shall govern the recommendations and other approvals of the department and
17 the local governing authority.

18 J. If the governing body of a city or town recommends disapproval by
19 a two-thirds vote of the members present and voting of ON an application for
20 the issuance or transfer of a spirituous liquor license that, if approved,
21 would result in a license being issued at a location either having no license
22 or having a license of a different series, the application shall not be
23 approved unless the board decides to approve the application by a two-thirds
24 vote of the members present and voting.

25 Sec. 2. Section 4-203, Arizona Revised Statutes, is amended to read:
26 4-203. Licenses; issuance; transfer; reversion to state

27 A. A spirituous liquor license shall be issued only after satisfactory
28 showing of the capability, qualifications and reliability of the applicant
29 and, with the exception of club licensees, that the public convenience
30 requires and that the best interest of the community will be substantially
31 served by the issuance.

32 B. The license shall be to manufacture, sell or deal in spirituous
33 liquors only at the place and in the manner provided in the license. A
34 separate license shall be issued for each specific business, and each shall
35 specify:

36 1. The particular spirituous liquors which the licensee is authorized
37 to manufacture, sell or deal in.

38 2. The place of business for which issued.

39 3. The purpose for which the liquors may be manufactured or sold.

40 C. A spirituous liquor license issued to a bar, a liquor store or a
41 beer and wine bar shall be transferable as to any permitted location within
42 the same county, provided such transfer meets the requirements of an original
43 application. Such spirituous liquor license may be transferred to a person
44 qualified to be a licensee, provided such transfer is pursuant to either
45 judicial decree, nonjudicial foreclosure of a legal or equitable lien, a bona

1 fide bulk sale of the entire business and stock in trade, or such other bona
2 fide transactions as may be provided for by rule. Any change in ownership
3 of the business of a licensee, directly or indirectly, as defined by rule is
4 deemed a transfer.

5 D. All applications for a new license pursuant to section 4-201 or for
6 a transfer to a new location pursuant to subsection C of this section shall
7 be filed with and determined by the director, except when the governing body
8 of the city or town or the board of supervisors receiving such application
9 pursuant to section 4-201 orders disapproval of such application or makes no
10 recommendation or when the director, the state liquor board or any aggrieved
11 party requests a hearing. Such application shall then be presented to the
12 state liquor board, and the new license or transfer shall not become
13 effective unless approved by the state liquor board.

14 E. A person who assigns, transfers or sells a business which has a
15 spirituous liquor license shall notify the director within thirty days of the
16 assignment, transfer or sale. No spirituous liquor license shall be leased
17 or subleased. A concession agreement entered into under section 4-205.03 is
18 not considered a lease or sublease in violation of this section.

19 F. If a license or licensee is acquired or controlled by a person
20 other than those persons originally licensed, the person shall file notice
21 within thirty days of such acquisition and control and a list of officers,
22 directors or other controlling persons on a form prescribed by the director.
23 All officers, directors or other controlling persons shall meet the
24 qualifications for licensure as prescribed by this title. On request, the
25 director shall conduct a preinvestigation prior to the assignment, sale or
26 transfer of a license, the reasonable costs of which, not to exceed one
27 thousand dollars, shall be borne by the applicant. The preinvestigation
28 shall determine whether the qualifications for licensure as prescribed by
29 this title are met. If the director has not conducted a preinvestigation,
30 the director may protest the acquisition of control before the board by
31 issuing notice of a hearing within ninety days of the filing of the notice
32 of acquisition and control. The person who has acquired control of a license
33 or licensee has the burden of an original application at the hearing, and the
34 board shall make its determination pursuant to section 4-202 and this section
35 with respect to capability, reliability and qualification.

36 G. A licensee who holds a license in nonuse status for more than five
37 months shall be required to pay a one hundred dollar surcharge for each month
38 thereafter. The surcharge shall be paid at the time the license is returned
39 to active status. A license automatically reverts to the state after being
40 held in continuous nonuse in excess of thirty-six months. The director may
41 waive the surcharge and may extend the time period provided in this
42 subsection for good cause.

43 H. A RESTRUCTURING OF A LICENSEE'S BUSINESS IS AN ACQUISITION OF
44 CONTROL PURSUANT TO SUBSECTION F OF THIS SECTION AND IS A TRANSFER OF A

1 SPIRITUOUS LIQUOR LICENSE AND NOT THE ISSUANCE OF A NEW SPIRITUOUS LIQUOR
2 LICENSE IF BOTH OF THE FOLLOWING APPLY:

3 1. ALL OF THE CONTROLLING PERSONS OF THE LICENSEE AND THE NEW BUSINESS
4 ENTITY ARE IDENTICAL.

5 2. THERE IS NO CHANGE IN CONTROL OR BENEFICIAL OWNERSHIP.

6 1. IF SUBSECTION H OF THIS SECTION APPLIES, THE LICENSEE'S HISTORY OF
7 VIOLATIONS OF THIS TITLE IS THE HISTORY OF THE NEW BUSINESS ENTITY. THE
8 DIRECTOR MAY PRESCRIBE A FORM AND SHALL REQUIRE THE APPLICANT TO PROVIDE THE
9 NECESSARY INFORMATION TO ENSURE COMPLIANCE WITH THIS SUBSECTION AND
10 SUBSECTIONS F AND G OF THIS SECTION.

11 ~~H. A spirituous liquor license issued to a bar or a liquor store or~~
12 ~~a beer and wine bar license shall not be voluntarily transferred from the~~
13 ~~licensee to another person unless all of the following apply:~~

14 ~~1. The license was used in the operation of a bona fide business~~
15 ~~continually on a full-time basis for at least two years.~~

16 ~~2. The license was used in the operation of a bona fide business at~~
17 ~~the same location and on a full-time basis for at least one year.~~

18 ~~3. The transfer is part of the sale or liquidation of the ongoing~~
19 ~~business.~~

20 ~~1. A transfer of more than fifty per cent of the stock of a~~
21 ~~corporation which is the holder of a license prior to the two year period~~
22 ~~prescribed by subsection H of this section is a prohibited transfer of a~~
23 ~~license as prescribed in subsection H of this section.~~

24 J. Notwithstanding subsection B of this section, the holder of a
25 retail license having off-sale privileges may deliver spirituous liquor off
26 of the licensed premises in connection with the sale of spirituous liquor.
27 The licensee may maintain a delivery service and shall be liable for any
28 violation committed in connection with any sale or delivery of spirituous
29 liquor, provided that such delivery is made by an employee at least
30 twenty-one years of age. The retail licensee shall collect payment for the
31 price of the spirituous liquor no later than at the time of delivery. The
32 director shall adopt rules that set operational limits for the delivery of
33 spirituous liquors by the holder of a retail license having off-sale
34 privileges.

35 K. Nonretail Arizona licensees may transport spirituous liquors for
36 themselves in vehicles owned, leased or rented by such licensee.

37 L. Notwithstanding subsection B of this section, an off-sale retail
38 licensee may provide consumer tasting of wines off of the licensed premises.

39 M. The director may adopt reasonable rules to protect the public
40 interest and prevent abuse by licensees of the activities permitted such
41 licensees by subsections J and L of this section.

42 N. Failure to pay any surcharge prescribed by subsection G of this
43 section or failure to report the period of nonuse of a license shall be
44 grounds for revocation of the license or grounds for any other sanction
45 provided by this title. The director may consider extenuating circumstances

1 if control of the license is acquired by another party in determining whether
2 or not to impose any sanctions under this subsection.

3 O. If a licensed location has not been in use for two years, the
4 location must requalify for a license pursuant to subsection A of this
5 section and shall meet the same qualifications required for issuance of a new
6 license except when the director deems that the nonuse of the location was
7 due to circumstances beyond the licensee's control.

8 P. IF THE LICENSEE'S INTEREST IS FORFEITED PURSUANT TO SECTION 4-210,
9 SUBSECTION K, THE LOCATION SHALL REQUALIFY FOR A LICENSE PURSUANT TO
10 SUBSECTION A OF THIS SECTION AND SHALL MEET THE SAME QUALIFICATIONS REQUIRED
11 FOR ISSUANCE OF A NEW LICENSE EXCEPT WHEN A BONA FIDE LIENHOLDER DEMONSTRATES
12 MITIGATION PURSUANT TO SECTION 4-210, SUBSECTION J.

13 Sec. 3. Section 4-205.04, Arizona Revised Statutes, is amended to
14 read:

15 4-205.04. Domestic farm winery or domestic microbrewery
16 license; issuance; regulatory provisions; retail
17 site

18 A. The director may issue a domestic farm winery or domestic
19 microbrewery license to any domestic farm winery or domestic microbrewery.
20 Each location which engages in producing and bottling these products must
21 obtain a separate domestic farm winery or domestic microbrewery license, but
22 both such licenses may be issued for a common location. The licensee may not
23 transfer the domestic farm winery or domestic microbrewery license from
24 person to person or from location to location.

25 B. An applicant for a domestic farm winery or domestic microbrewery
26 license shall, at the time of filing the application for the license,
27 accompany the application with the license fee. Persons holding a domestic
28 farm winery or domestic microbrewery license shall report annually at the end
29 of each fiscal year, at such time and in such manner as the director may
30 prescribe, the amount of wine or beer manufactured by them during the fiscal
31 year. If the total amount of wine or beer manufactured during the year
32 exceeds the amount permitted annually by the license, the licensee shall
33 apply for and receive an in-state producer's license.

34 C. Notwithstanding any other statute, a licensed domestic farm winery
35 may sell wine produced or manufactured on the premises in the original
36 container for consumption on or off the premises and may make sales and
37 deliveries of wine to persons licensed to sell wine under this title. A
38 licensed domestic farm winery may serve wine produced or manufactured on the
39 premises for the purpose of sampling the wine.

40 D. A licensed domestic farm winery IS SUBJECT TO ALL OF THE FOLLOWING
41 REQUIREMENTS:

42 1. THE WINERY shall produce not less than two hundred gallons and not
43 more than seventy-five thousand gallons of wine annually from grapes or other
44 suitable agricultural products of which at least seventy-five per cent are
45 grown in this state. The director may allow a percentage of out-of-state

1 agricultural products greater than twenty-five per cent in wine manufactured
2 or produced by a licensed domestic farm winery if the licensed domestic farm
3 winery can demonstrate to the satisfaction of the director that sufficient
4 in-state agricultural products are not available because of an unexpected
5 failure of suitable in-state crops due to natural causes. The exemption
6 shall remain in effect only for the period of time during which such
7 shortages actually exist.

8 2. THE WINERY MAY PURCHASE AND SELL WINE PRODUCED FROM A DOMESTIC FARM
9 WINERY IF THE RETAIL SALE OF THE WINE IS CONDUCTED FROM THE SAME SITE AS THE
10 LOCATION OF THE WINERY.

11 E. Notwithstanding any other statute, a licensed domestic microbrewery
12 may sell beer produced or manufactured on the premises for consumption on or
13 off the premises and may make sales and deliveries of beer to persons
14 licensed to sell beer under this title, including wholesalers licensed under
15 this title. A licensed domestic microbrewery may serve beer produced or
16 manufactured on the premises for the purpose of sampling the beer. A
17 licensed domestic microbrewery is subject to all of the following
18 requirements:

19 1. The microbrewery shall produce not less than ten thousand gallons
20 of beer in each year following the first year of operation.

21 2. The microbrewery shall not produce more than three hundred ten
22 thousand gallons of beer annually.

23 3. If retail operations are conducted in conjunction with the
24 microbrewery, these retail operations shall be conducted from the same site
25 as the location of the microbrewery.

26 4. The microbrewery may sell other spirituous liquor product PRODUCTS
27 if:

28 (a) The microbrewery holds an on-sale retail license.

29 (b) The retail sale of the spirituous liquor is on or adjacent to
30 the premises of the microbrewery.

31 F. A person who holds a domestic microbrewery license that meets the
32 requirements of this section and who is not otherwise engaged in the business
33 of a distiller, vintner, brewer, rectifier, blender or other producer of
34 spirituous liquor in any jurisdiction may hold other on-sale retail licenses.
35 The person shall purchase all spirituous liquor for sale at the other on-sale
36 retail premises from wholesalers who are licensed in this state.

37 G. The director shall adopt rules in order to administer this section.

38 Sec. 4. Section 4-210, Arizona Revised Statutes, is amended to read:

39 4-210. Grounds for revocation, suspension and refusal to renew;

40 notice; complaints; hearings

41 A. AFTER NOTICE AND HEARING the director may suspend, revoke or refuse
42 to renew any license issued pursuant to this chapter for any of the following
43 reasons:

44 1. There occurs on the licensed premises repeated acts of violence or
45 disorderly conduct.

1 2. The licensee fails to satisfactorily maintain the capability,
2 qualifications and reliability requirements of an applicant for a license
3 prescribed in section 4-202 or 4-203.

4 3. The licensee or controlling person knowingly files with the
5 department an application or other document which contains material
6 information which is false or misleading or while under oath knowingly gives
7 testimony in an investigation or other proceeding under this title which is
8 false or misleading.

9 4. The licensee or controlling person is on the premises habitually
10 intoxicated.

11 5. The licensed business is delinquent for more than ninety days in
12 the payment of taxes, penalties or interest to the state or to any political
13 subdivision of the state.

14 6. The licensee or controlling person assigns, transfers or sells a
15 spirituous liquor license without compliance with this title or leases or
16 subleases a license.

17 7. The licensee fails to keep for two years and make available to the
18 department upon reasonable request all invoices, records, bills or other
19 papers and documents relating to the purchase, sale and delivery of
20 spirituous liquors and, in the case of a restaurant or hotel-motel licensee,
21 all invoices, records, bills or other papers and documents relating to the
22 purchase, sale and delivery of food.

23 8. The licensee or controlling person is convicted of a felony
24 provided that for a conviction of a corporation to serve as a reason for any
25 action by the director, conduct which constitutes the corporate offense and
26 was the basis for the felony conviction must have been engaged in,
27 authorized, solicited, commanded or recklessly tolerated by the directors of
28 the corporation or by a high managerial agent acting within the scope of
29 employment.

30 9. The licensee or controlling person violates or fails to comply with
31 this title, any rule adopted pursuant to this title or any liquor law of this
32 state or any other state.

33 10. The licensee fails to take reasonable steps to protect the safety
34 of a customer of the licensee entering, leaving or remaining on the licensed
35 premises when the licensee knew or reasonably should have known of the danger
36 to such person, or the licensee fails to take reasonable steps to intervene
37 by notifying law enforcement officials or otherwise to prevent or break up
38 an act of violence or an altercation occurring on the licensed premises or
39 immediately adjacent to the premises when the licensee knew or reasonably
40 should have known of such acts of violence or altercations.

41 11. The licensee or controlling person lacks good moral character.

42 12. The licensee or controlling person knowingly associates with a
43 person who has engaged in racketeering, as defined in section 13-2301, or has
44 been convicted of a felony, and the association is of such a nature as to

1 create a reasonable risk that the licensee will fail to conform to the
2 requirements of this title or of any criminal statute of this state.

3 B. For the purposes of:

4 1. Subsection A, paragraph 8 of this section, "high managerial agent"
5 means an officer of a corporation or any other agent of the corporation in
6 a position of comparable authority with respect to the formulation of
7 corporate policy.

8 2. Subsection A, paragraphs 9 and 10 of this section, acts or
9 omissions of an employee of a licensee which violate any provision of this
10 title or rules adopted pursuant to this title shall be deemed to be acts or
11 omissions of the licensee. Acts or omissions by an employee or licensee
12 committed during the time the licensed premises were operated pursuant to an
13 interim permit or without a license may be charged as if they had been
14 committed during the period the premises were duly licensed.

15 C. The director may suspend, revoke or refuse to issue, transfer or
16 renew a license under this section based solely on the unrelated conduct or
17 fitness of any officer, director, managing agent or other controlling person
18 if the controlling person retains any interest in or control of the licensee
19 after sixty days following written notice to the licensee. If the
20 controlling person holds stock in a corporate licensee or is a partner in a
21 partnership licensee, the controlling person may only divest himself of his
22 interest by transferring the interest to the existing stockholders or
23 partners who must demonstrate to the department that they meet all the
24 requirements for licensure. For the purposes of this subsection the conduct
25 or fitness of a controlling person is unrelated if it would not be
26 attributable to the licensee.

27 D. The director may refuse to transfer any license or issue a new
28 license at the same location if the director has filed a complaint against
29 the license or location which has not been resolved alleging a violation of
30 any of the grounds set forth in subsection A of this section until such time
31 as said complaint has been finally adjudicated.

32 E. The director shall receive all complaints of alleged violations of
33 this chapter and is responsible for the investigation of all allegations of
34 a violation of, or noncompliance with, this title, any rule adopted pursuant
35 to this title or any condition imposed upon the licensee by the
36 license. When the director receives three such complaints from any law
37 enforcement agency resulting from three separate incidents at a licensed
38 establishment within a twelve-month period, the director shall transmit a
39 written report to the board setting forth the complaints, the results of any
40 investigation conducted by the law enforcement agency or the department
41 relating to the complaints and a history of all prior complaints against the
42 license and their disposition. The board shall review the report and may
43 direct the director to conduct further investigation of a complaint or to
44 serve a licensee with a complaint and notice of a hearing pursuant to
45 subsection F of this section.

1 F. Upon the director's initiation of an investigation or upon the
2 receipt of a complaint and an investigation of the complaint as deemed
3 necessary, the director may cause a complaint and notice of a hearing to be
4 directed to the licensee setting forth the violations alleged against the
5 licensee and directing the licensee, within fifteen days after service of the
6 complaint and notice of a hearing, to appear by filing with the director an
7 answer to the complaint. Failure of the licensee to answer may be deemed an
8 admission by the licensee of commission of the act charged in the complaint.
9 The director may then vacate the hearing and impose any sanction provided
10 by this article. The director may waive any sanction for good cause shown
11 including excusable neglect. The director may set the hearing before himself
12 or an administrative law judge on any of the grounds set forth in subsection
13 A of this section. Instead of issuing a complaint, the director may provide
14 for informal disposition of the matter by consent agreement or may issue a
15 written warning to the licensee. If a warning is issued, the licensee may
16 reply in writing and the director shall keep a record of the warning and the
17 reply.

18 G. A hearing shall conform to the requirements of title 41, chapter
19 6, article 10. At the hearing an attorney or corporate officer or employee
20 of a corporation may represent the corporation.

21 H. The expiration, cancellation, revocation, reversion, surrender,
22 acceptance of surrender or termination in any other manner of a license does
23 not prevent the initiation or completion of a disciplinary proceeding
24 pursuant to this section against the licensee or license. An order issued
25 pursuant to a disciplinary proceeding against a license is enforceable
26 against other licenses or subsequent licenses in which the licensee or
27 controlling person of the license has a controlling interest.

28 I. The department shall provide the same notice as is provided to the
29 licensee to a lienholder, which has provided a document under section 4-112,
30 subsection B, paragraph 3, of all disciplinary OR COMPLIANCE action with
31 respect to a license issued pursuant to this title. The state shall not be
32 liable for damages for any failure to provide any notice pursuant to this
33 subsection.

34 ~~J. In an action to revoke a license issued~~ ANY DISCIPLINARY ACTION
35 pursuant to this title, A LIENHOLDER MAY PARTICIPATE IN THE DETERMINATION OF
36 THE ACTION. The director shall consider ~~as mitigating factors~~ MITIGATION on
37 behalf of the lienholder ~~the following circumstances~~ IF THE LIENHOLDER PROVES
38 ALL OF THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

39 1. THAT THE LIENHOLDER'S INTEREST IS A BONA FIDE SECURITY INTEREST.
40 FOR PURPOSES OF THIS PARAGRAPH, "BONA FIDE SECURITY INTEREST" MEANS THE
41 LIENHOLDER PROVIDES ACTUAL CONSIDERATION TO THE LICENSEE OR THE LICENSEE'S
42 PREDECESSOR IN INTEREST IN EXCHANGE FOR THE LIENHOLDER'S INTEREST. BONA FIDE
43 SECURITY INTEREST INCLUDES A LIEN TAKEN BY THE SELLER OF A LICENSE AS
44 SECURITY FOR THE SELLER'S RECEIPT OF ALL OR PART OF THE PURCHASE PRICE OF THE
45 LICENSE.

1 ~~1-~~ 2. Whether THAT a statement of legal or equitable interest was
2 filed with the department before the alleged conduct occurred which is the
3 basis for the action against the license.

4 ~~2-~~ 3. Whether THAT the lienholder took REASONABLE steps to correct
5 the licensee's prior actions, if any, or initiated an action pursuant to
6 available contract rights against the licensee for the forfeiture of the
7 license after being provided with notice by the department of disciplinary
8 action as provided in subsection I of this section.

9 ~~3-~~ 4. Whether THAT the lienholder was free of responsibility for the
10 conduct which is the basis for the proposed revocation.

11 5. THAT THE LIENHOLDER REASONABLY ATTEMPTED TO REMAIN INFORMED BY THE
12 LICENSEE ABOUT THE BUSINESS' CONDUCT.

13 K. In the event the director decides not to revoke the license based
14 on the circumstances provided in subsection J of this section, the director
15 may issue an order requiring EITHER, OR BOTH, OF THE FOLLOWING:

16 1. The forfeiture of all interest of the licensee in the license.

17 2. THE LIENHOLDER TO PAY ANY CIVIL MONETARY PENALTY IMPOSED ON THE
18 LICENSEE.

19 L. If any on-sale licensee proposes to provide large capacity
20 entertainment events or sporting events with an attendance capacity exceeding
21 a limit established by the director, the director may request a security plan
22 from the licensee, that may include trained security officers, lighting and
23 other requirements. This subsection exclusively defines PRESCRIBES the
24 security requirements for a licensee and does not create any civil liability
25 for the state, its agencies, agents or employees or a person licensed under
26 this title or agents or employees of a licensee.

27 Sec. 5. Section 4-244, Arizona Revised Statutes, is amended to read:

28 4-244. Unlawful acts

29 It is unlawful:

30 1. For a person to buy for resale, sell or deal in spirituous liquors
31 in this state without first having procured a license duly issued by the
32 board.

33 2. For a person to sell or deal in alcohol for beverage purposes
34 without first complying with this title.

35 3. For a distiller, vintner, brewer or wholesaler knowingly to sell,
36 dispose of or give spirituous liquor to any person other than a licensee
37 except in sampling wares as may be necessary in the ordinary course of
38 business, or except in donating spirituous liquor to a nonprofit organization
39 which has obtained a special event license for the purpose of charitable fund
40 raising activities OR EXCEPT IN DONATING SPIRITUOUS LIQUOR WITH A COST TO THE
41 DISTILLER, BREWER OR WHOLESALER OF UP TO ONE HUNDRED DOLLARS IN A CALENDAR
42 YEAR TO AN ORGANIZATION THAT IS EXEMPT FROM FEDERAL INCOME TAXES UNDER
43 SECTION 501 (c) OF THE INTERNAL REVENUE CODE AND NOT LICENSED UNDER THIS
44 TITLE.

1 4. For a distiller, vintner or brewer to require a wholesaler to offer
2 or grant a discount to a retailer, unless the discount has also been offered
3 and granted to the wholesaler by the distiller, vintner or brewer.

4 5. For a distiller, vintner or brewer to use a vehicle for trucking
5 or transportation of spirituous liquors unless there is affixed to both sides
6 of the vehicle a sign showing the name and address of the licensee and the
7 type and number of the person's license in letters not less than three and
8 one-half inches in height.

9 6. For a person to take or solicit orders for spirituous liquors
10 unless the person is a salesman or solicitor of a licensed wholesaler, a
11 salesman or solicitor of a distiller, brewer, vintner, importer or broker or
12 a registered retail agent.

13 7. For any retail licensee to purchase spirituous liquors from any
14 person other than a solicitor or salesman of a wholesaler licensed in this
15 state.

16 8. For a retailer to acquire an interest in property owned, occupied
17 or used by a wholesaler in his business, or in a license with respect to the
18 premises of the wholesaler.

19 9. Except as provided in paragraphs 10 and 11 of this section, for a
20 licensee or other person to sell, furnish, dispose of or give, or cause to
21 be sold, furnished, disposed of or given, to a person under the legal
22 drinking age or for a person under the legal drinking age to buy, receive,
23 have in the person's possession or consume spirituous liquor. The provisions
24 of this paragraph shall not prohibit the employment by an off-sale retailer
25 of persons who are at least sixteen years of age to check out, if supervised
26 by a person on the premises who is at least nineteen years of age, package
27 or carry merchandise, including spirituous liquor, in unbroken packages, for
28 the convenience of the customer of the employer, if the employer sells
29 primarily merchandise other than spirituous liquor.

30 10. For a licensee to employ a person under the age of nineteen years
31 to manufacture, sell or dispose of spirituous liquors. The provisions of
32 this paragraph shall not prohibit the employment by an off-sale retailer of
33 persons who are at least sixteen years of age to check out, if supervised by
34 a person on the premises who is at least nineteen years of age, package or
35 carry merchandise, including spirituous liquor, in unbroken packages, for the
36 convenience of the customer of the employer, if the employer sells primarily
37 merchandise other than spirituous liquor.

38 11. For an on-sale ~~retail licensee~~ RETAILER to employ a person under
39 the age of nineteen years in any capacity connected with the handling of
40 spirituous liquors. This paragraph does not prohibit the employment by an
41 on-sale retailer of a person under the age of nineteen years who cleans up
42 the tables on the premises for reuse, removes dirty dishes, keeps a ready
43 supply of needed items and helps clean up the premises.

44 12. For a licensee, when engaged in waiting on or serving customers,
45 to consume spirituous liquor or for a licensee or on-duty employee to be on

1 or about the licensed premises while in an intoxicated or disorderly
2 condition.

3 13. For an employee of a retail licensee, during that employee's
4 working hours or in connection with such employment, to give to or purchase
5 for any other person, accept a gift of, purchase for himself or consume
6 spirituous liquor, except that an employee of a licensee, during that
7 employee's working hours or in connection with the employment, while the
8 employee is not engaged in waiting on or serving customers, may give
9 spirituous liquor to or purchase spirituous liquor for any other person. An
10 unpaid volunteer who is a bona fide member of a club and who is not engaged
11 in waiting on or serving spirituous liquor to customers may purchase for
12 himself and consume spirituous liquor while participating in a scheduled
13 event at the club. An unpaid participant in a food competition may purchase
14 for himself and consume spirituous liquor while participating in the food
15 competition.

16 14. For a licensee or other person to serve, sell or furnish spirituous
17 liquor to a disorderly or obviously intoxicated person, or for a licensee or
18 employee of the licensee to allow or permit a disorderly or obviously
19 intoxicated person to come into or remain on or about the premises, except
20 that a licensee or an employee of the licensee may allow an obviously
21 intoxicated person to remain on the premises for a period of time of not to
22 exceed thirty minutes after the state of obvious intoxication is known or
23 should be known to the licensee in order that a nonintoxicated person may
24 transport the obviously intoxicated person from the premises. For purposes
25 of this section, "obviously intoxicated" means inebriated to the extent that
26 a person's physical faculties are substantially impaired and the impairment
27 is shown by significantly uncoordinated physical action or significant
28 physical dysfunction that would have been obvious to a reasonable person.

29 15. For an on-sale or off-sale ~~retail licensee~~ RETAILER or an employee
30 of such ~~licensee~~ RETAILER to sell, dispose of, deliver or give spirituous
31 liquor to a person between the hours of 1:00 a.m. and 6:00 a.m. on weekdays,
32 and 1:00 a.m. and 10:00 a.m. on Sundays.

33 16. For a licensee or employee to knowingly permit any person on or
34 about the licensed premises to give or furnish any spirituous liquor to any
35 person under the age of twenty-one or knowingly permit any person under the
36 age of twenty-one to have in the person's possession spirituous liquor on the
37 licensed premises.

38 17. For an on-sale ~~retail licensee~~ RETAILER or an employee of such
39 ~~licensee~~ RETAILER to allow a person to consume spirituous liquors on the
40 premises between the hours of 1:15 a.m. and 6:00 a.m. on weekdays, and 1:15
41 a.m. and 10:00 a.m. on Sundays, or allow a person who is not the licensee or
42 employee to possess spirituous liquors in open containers on the premises
43 between the hours of 1:30 a.m. and 6:00 a.m. on weekdays, and 1:30 a.m. and
44 10:00 a.m. on Sundays.

1 18. For an on-sale ~~retail~~ licensee RETAILER to permit an employee or
2 for an employee to solicit or encourage others, directly or indirectly, to
3 buy the employee drinks or anything of value in the licensed premises during
4 the employee's working hours. No licensee ON-SALE RETAILER shall serve
5 employees or allow a patron of the establishment to give spirituous liquor
6 to, purchase liquor for or drink liquor with any employee during the
7 employee's working hours.

8 19. For an off-sale retailer or employee to sell spirituous liquor
9 except in the original unbroken container, to permit spirituous liquor to be
10 consumed on the premises or to knowingly permit spirituous liquor to be
11 consumed on adjacent property under the licensee's exclusive control.

12 20. For a person to consume spirituous liquor in a public place,
13 thoroughfare or gathering. The license of a licensee permitting a violation
14 of this paragraph on the premises shall be subject to revocation. This
15 paragraph does not apply to the sale of spirituous liquors on the premises
16 of and by an on-sale ~~retail~~ licensee RETAILER. This paragraph also does not
17 apply to a person consuming beer from a broken package in a public recreation
18 area or on private property with permission of the owner or lessor or on the
19 walkways surrounding such private property.

20 21. For a person to have possession of or to transport spirituous
21 liquor which is manufactured in a distillery, winery, brewery or rectifying
22 plant contrary to the laws of the United States and this state. Any property
23 used in transporting such spirituous liquor shall be forfeited to the state
24 and shall be seized and disposed of as provided in section 4-221.

25 22. For an on-sale ~~retail~~ licensee RETAILER or employee to allow a
26 person under the legal drinking age to remain in an area on the licensed
27 premises during those hours in which its primary use is the sale, dispensing
28 or consumption of alcoholic beverages after the licensee, or the licensee's
29 employees, know or should have known that the person is under the legal
30 drinking age. A licensee AN ON-SALE RETAILER may designate an area of the
31 licensed premises as an area in which spirituous liquor will not be sold or
32 consumed for the purpose of allowing underage persons on the premises if the
33 designated area is separated by a physical barrier and at no time will
34 underage persons have access to the area in which spirituous liquor is sold
35 or consumed. The director, or a municipality, may adopt rules to regulate
36 the presence of underage persons on licensed premises provided the rules
37 adopted by a municipality are more stringent than those adopted by the
38 director. The rules adopted by the municipality shall be adopted by local
39 ordinance. This paragraph does not apply:

40 (a) If the person under the legal drinking age is accompanied by a
41 spouse, parent or legal guardian of legal drinking age or is an on-duty
42 employee of the licensee.

43 (b) If the owner, lessee or occupant of the premises is a club as
44 defined in section 4-101, paragraph 7, subdivision (a) and the person under
45 the legal drinking age is any of the following:

1 (i) An active duty military service member.

2 (ii) A veteran.

3 (iii) A member of the United States army national guard or the United
4 States air national guard.

5 (iv) A member of the United States military reserve forces.

6 (c) To the area of the premises used primarily for the serving of food
7 during the hours when food is served.

8 23. For an on-sale ~~retail~~ licensee RETAILER or employee to conduct
9 drinking contests, to sell or deliver to a person an unlimited number of
10 spirituous liquor beverages during any set period of time for a fixed price,
11 to deliver more than thirty-two ounces of beer, one liter of wine or four
12 ounces of distilled spirits in any spirituous liquor drink to one person at
13 one time for that person's consumption or to advertise any practice
14 prohibited by this paragraph.

15 24. For a licensee or employee to knowingly permit the unlawful
16 possession, use, sale or offer for sale of narcotics, dangerous drugs or
17 marijuana on the premises.

18 25. For a licensee or employee to knowingly permit prostitution or the
19 solicitation of prostitution on the premises.

20 26. For a licensee or employee to knowingly permit unlawful gambling
21 on the premises.

22 27. For a licensee or employee to knowingly permit trafficking or
23 attempted trafficking in stolen property on the premises.

24 28. For a licensee or employee to fail or refuse to make the premises
25 or records available for inspection and examination as provided in this title
26 or to comply with a lawful subpoena issued under this title.

27 29. For any person other than a peace officer, the licensee or an
28 employee of the licensee acting with the permission of the licensee to be in
29 possession of a firearm while on the licensed premises of an on-sale ~~retail~~
30 establishment RETAILER knowing such possession is prohibited. This paragraph
31 shall not be construed to include a situation in which a person is on
32 licensed premises for a limited time in order to seek emergency aid and such
33 person does not buy, receive, consume or possess spirituous liquor. This
34 paragraph shall not apply to hotel or motel guest room accommodations nor to
35 the exhibition or display of a firearm in conjunction with a meeting, show,
36 class or similar event.

37 30. For a licensee or employee to knowingly permit a person in
38 possession of a firearm other than a peace officer, the licensee or an
39 employee of the licensee acting with the permission of the licensee to remain
40 on the licensed premises or to serve, sell or furnish spirituous liquor to
41 a person in possession of a firearm while on the licensed premises of an
42 on-sale ~~retail~~ establishment RETAILER. This paragraph shall not apply to
43 hotel or motel guest room accommodations nor to the exhibition or display of
44 a firearm in conjunction with a meeting, show, class or similar event. It

1 shall be a defense to action under this paragraph if the licensee or employee
2 requested assistance of a peace officer to remove such person.

3 31. For a licensee or employee to knowingly permit spirituous liquor
4 to be removed from the licensed premises, except in the original unbroken
5 package. This paragraph shall not apply to a person who removes a bottle of
6 wine which has been partially consumed in conjunction with a purchased meal
7 from the licensed premises if the cork is reinserted flush with the top of
8 the bottle.

9 32. For a person who is obviously intoxicated to buy or attempt to buy
10 spirituous liquor from a licensee or employee of a licensee or to consume
11 spirituous liquor on licensed premises.

12 33. For a person under the age of twenty-one years to drive or be in
13 physical control of a motor vehicle while there is any spirituous liquor in
14 the person's body.

15 34. For a person under the age of twenty-one years to operate or be in
16 physical control of a motorized watercraft that is underway while there is
17 any spirituous liquor in the person's body. For the purposes of this
18 paragraph, "underway" has the same meaning as prescribed in section 5-301.

19 35. For a licensee, manager, employee or controlling person to
20 purposely induce a voter, by means of alcohol, to vote or abstain from voting
21 for or against a particular candidate or issue on an election day.

22 36. For a licensee to fail to report an occurrence of an act of
23 violence to either the department or a law enforcement agency.

24 37. For a licensee to use a vending machine for the purpose of
25 dispensing spirituous liquor.

26 38. For a licensee to offer for sale a wine carrying a label including
27 a reference to Arizona or any Arizona city, town or geographic location
28 unless at least seventy-five per cent by volume of the grapes used in making
29 the wine were grown in Arizona.

30 39. For a retailer to knowingly allow a customer to bring spirituous
31 liquor onto the licensed premises, except that an on-sale retailer may allow
32 a wine and food club to bring wine onto the premises for consumption by the
33 club's members and guests of the club's members in conjunction with meals
34 purchased at a meeting of the club that is conducted on the premises and that
35 at least seven members attend. An on-sale retailer who allows wine and food
36 clubs to bring wine onto its premises under this paragraph shall comply with
37 all applicable provisions of this title and any rules adopted pursuant to
38 this title to the same extent as if the on-sale retailer had sold the wine
39 to the members of the club and their guests. For the purposes of this
40 paragraph, "wine and food club" means an association that has more than
41 twenty bona fide members paying at least six dollars per year in dues and
42 that has been in existence for at least one year.

1 Sec. 6. Rules; exemption from administrative procedures act

2 A. The department of liquor licenses and control is exempt from title
3 41, chapter 6, Arizona Revised Statutes, until December 31, 2001 for either
4 of the following purposes:

5 1. Modifying rules regarding signs, retail promotions, glassware
6 promotions or product recovery by a wholesaler when a retailer is closed or
7 a retailer discontinues a product.

8 2. Conforming rules to statutory changes.

9 B. The department of liquor licenses and control shall provide notice
10 of and hold at least two public hearings before adopting any proposed rule
11 under the exemption prescribed by subsection A. In at least one public
12 hearing a person shall have an opportunity to consider and comment, both
13 verbally and in writing, on any draft rule that the department of liquor
14 licenses and control is considering for adoption.

APPROVED BY THE GOVERNOR MAY 7, 2001.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2001.

Passed the House April 25, 20 01

by the following vote: 43 Ayes,

15 Nays, 2 Not Voting

Jake Flake
Speaker, of the House
Pro Tempore
Norman L. Moore
Chief Clerk of the House

Passed the Senate March 20, 20 01

by the following vote: 26 Ayes,

3 Nays, 1 Not Voting

Randall Smith
President of the Senate
Chasmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1509

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE
AMENDMENTS AND FINAL PASSAGE

Passed the Senate May 01, 2001

by the following vote: 28 Ayes,

1 Nays, 1 Not Voting

Randall Strand
President of the Senate
Charmie Robinson
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

1 day of May, 2001

at 10:54 o'clock A M.

Sandra Ramirez
Secretary to the Governor

APPROVED THIS 7 day of

May, 2001,

at 2:46 o'clock P M.

James White
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of May, 2001

at 5:00 o'clock P M.

Ruby Gayles
Secretary of State

S.B. 1509